ALLEN & OVERY

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Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

Government confirms approach for CDC schemes | TPR: new report on takeover without clearance | State pension uprating order

Government confirms approach for CDC schemes

The government is proceeding with plans to introduce collective DC (CDC) pension schemes, according to a recent consultation response (press release available here). CDC schemes pool and invest contributions, with the aim of delivering better member outcomes than individual DC arrangements. One of the key challenges for CDC schemes will be ensuring that members understand that their pension income is not guaranteed and may be reduced.

The government will propose legislation to facilitate the creation of a CDC pension scheme by Royal Mail, and subsequently consider extending CDC provision to other areas, particularly master trusts and decumulation-only vehicles. Proposals include:

- Classifying CDC benefits as a type of money purchase benefit as a means of assuring employers that they will not incur future liabilities to the scheme.
- Imposing various minimum requirements including a bespoke authorisation regime (building on the approach for master trusts, and including criteria such as the viability of the scheme), tailored disclosure requirements, a charge cap and annual actuarial valuations. The government is also considering the implications of CDC in other areas, including transfer rights and designing the quality test for auto-enrolment.
- Potential changes to the tax framework – HMRC is currently considering this issue, and will consult in due course.

It may be some time before the detailed framework is known, due to pressures on parliamentary time and the need for both primary and secondary legislation. The initial legislation will be designed to fit the Royal Mail scheme – only after this will the government legislate for broader CDC provision.

To read more about the initial consultation, see WNTW, 12 November 2018.

TPR: new report on takeover without clearance

The Pensions Regulator (TPR) has published a new report into the 2018 GKN/Melrose takeover, highlighting to trustees, employers and advisers how TPR expects to work with parties where there is a takeover or acquisition involving a DB scheme. In this case, Melrose did not seek clearance from TPR, but both GKN and Melrose engaged with the trustees to agree mitigation. TPR considered that a statement to the market issued by the trustees shortly after the announcement of the takeover bid, highlighting the aggregate funding level of the two schemes involved and the potential for reassessing covenant strength and funding requirements, was a positive factor in ensuring that the trustees were able to agree a funding package.

Where a transaction is likely to have a significant impact on the employer's ability to support a DB pension scheme, TPR notes that it is likely to communicate proactively with involved parties to ensure that appropriate steps are taken to understand and mitigate any material detriment to the scheme. TPR is likely to open an anti-avoidance investigation if it is not satisfied that appropriate arrangements have been made to mitigate any potential material detriment and, where clearance has not been sought, TPR may open an investigation at a later date if considered appropriate. In addition, TPR has stated that:

> 'We expect to be notified as soon as practicably possible about any potential transaction affecting a company or group that has a DB pension scheme attached. We routinely engage with confidential, price sensitive information and the sensitive nature of takeover discussions should not be a bar to discussing these situations with us. We are aware of the restrictions imposed by the takeover code for transactions which fall within the scope of that code, but would expect offerors to give careful consideration to whether the pension issues are sufficiently material to require early involvement of the pension trustees and the regulator.'

State pension uprating order

A new order specifies increases, from April 2019, to various social security benefits and pensions, including state pensions. Under the changes, the full rate of the new state pension will increase to GBP168.60 per week, and the weekly rate of the basic Category A state pension will increase to GBP129.20 – the new rates will be of interest to schemes operating a bridging pension/state pension offset. A list of proposed rates is available here.

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